IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4895 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BALDEVSINHGAMBHIRSINH SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4895 of 2001

MR MAHESH BHAVSAR for Petitioner No. 1

MS HARSHA DEVANI, AGP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 18/02/2002

ORAL JUDGEMENT

#. The father of the petitioner was serving on the post

of Malaria Surveillance Worker (MSW) at the relevant time. He was serving at Wadi Primary Health Center in Panchmahals District. While in service, he died on 23.6.1998. After his death, the petitioner applied for compassionate appointment. Income certificate is annexed by the petitioner at page 18 which is certified by the District Development Officer. Initially, request of the petitioner was turned down by the District Development Officer on the ground that, since the income of the petitioner is more than the limit prescribed by the department, his prayer cannot be accepted. That decision was challenged by the petitioner by filing Special Civil Application No.4373 of 2000. This Court by its order dated 3.5.2000 came to the conclusion that in view of the Government Resolution dated 10.3.2000 the matter may be reexamined again and that is how the said matter was disposed of. So far as the resolution dated 10.3.2000 is concerned, by the same, the Government has taken out the income criterion together. However, the Government again took a decision on 8.8.2000, and, by the said decision, the Government took a view that so far as the Government Resolution dated 10.3.2000 is concerned, it applies only prospectively and not retrospectively and since the petitioner's father died before the said resolution, he will not get the benefit of the same. The petitioner again challenged the said action by filing the present petition.

#. It is required to be noted that the petitioner has not been given the benefit of compassionate appointment only on the ground that the income of the deceased exceeds the relevant criterion. While taking that decision, pensionary benefit which the family of the deceased is receiving, is also taken into consideration. As per the certificate of the Sub-Treasury Officer which is at page 26, pension income, which the family of the deceased is receiving, is stated as Rs.2500/-.

#. In view of the various decisions of this Court, while deciding the income criterion, family pension is not required to be taken into consideration. Copy of the judgment is annexed by the petitioner which is at page 27 delivered in Special Civil Application No.799 of 2001. In that view of the matter, the matter is required to be sent back to the authority to reconsider the decision. While considering the income criteria of the family of the deceased, income of the family pension, which the family of the deceased is receiving, may not be taken into consideration and after excluding that income, the department may take into consideration all other factors except the pensionary benefit which the family of the

deceased is receiving. Such fresh decision accordingly may be taken within a period of two months from the date of receipt of the writ of this Court. This petition is partly allowed. Rule is made absolute to the aforesaid extent. The matter is sent back to respondent No.1 for taking fresh decision as per the observations made hereinabove. The petitioner is permitted to take direct service of this order.

(P.B.Majmudar,J)
(pathan)